



U.S. Department of Justice

Civil Rights Division

SYC:BOT:VD:RAK:dlb
DJ 168-28-16
DJ 168-28-17

Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

February 5, 2009

BY ELECTRONIC AND U.S. MAIL

Gretchen W. Kraemer, Esq.
Assistant Attorney General
State of Iowa
Department of Justice
Hoover State Office Building, Second Floor
Des Moines, Iowa 50319

United States v. State of Iowa, Case No. 04 cv 636;
Glenwood & Woodward Resource Centers

Dear Ms. Kraemer:

As you know, the Department of Justice toured the Glenwood Resource Center ("GRC") on October 7 - 10 and November 17 - 19, 2008 and the Woodward Resource Center ("WRC" - collectively the "Centers") on November 20 - 21, 2008 to assess the status of the State's compliance with the Iowa State Resource Center Plan ("SRC Plan") entered as an order of the court on November 24, 2004. We write now to memorialize the findings of our review.

Enclosed with this letter are compliance charts detailing our findings regarding the Centers' compliance with the court orders addressed on these tours.¹ We also have included (in the

¹ On April 2, 2008, the court entered the parties' Joint Motion for Entry of Stipulation for Supplemental Relief concerning GRC. That Joint Motion extended the implementation of certain provisions of the SRC Plan to October 30, 2008 and extended the final termination of the court's oversight of this action to April 30, 2010. The Joint Motion also required that Plans of Corrections be developed for those areas of the SRC Plan that the State had failed to implement timely. These Plans of Correction were entered as orders of the court on July 25, 2008. WRC was not a part of the Supplemental Relief Stipulation.

charts' middle column) our expert consultants' assessments and technical assistance. Please note that this is primarily their work product, which we have copied into the charts simply for ease of reference and to facilitate the provision of technical assistance.²

Also set forth below is the result of our focused review of the deaths that occurred at GRC in 2008 preceding our visit. The purpose of our review was to assess whether the deaths raised systemic issues bearing on GRC's compliance with the SRC Plan and generally accepted professional standards of care. Our consultant's analysis of these deaths is also included as an attachment to this letter.³

In addition, pursuant to the State's request for technical assistance, we provide our brief comments regarding characteristics of a medication variance system.

We note that, consistent with our pledge of transparency, we provided detailed exit briefings at the conclusions of our tours at each Center that covered both implementation of the SRC Plan and our review of the deaths at GRC. The information set forth herein provides additional detail, but does not depart from the information conveyed during those briefings. Also, as the State has progressed toward compliance with the SRC Plan, our compliance monitoring has focused on remaining areas of non-compliance, rather than an extensive review of both compliant and non-compliant areas. Thus, our comments herein are directed primarily toward those areas not in substantial compliance as of the October and November 2008 tours.

Finally, we wish to extend our continued appreciation to you, and to Field Operations officials Sally Titus and Karalyn Kuhns, and the staffs at the Centers for their continued hospitality, professional conduct, and timely response to our document requests.

In general, the State and the Centers continue to make progress in coming into compliance with the majority of the

² We have encoded the initials of individuals who are referenced in the charts and separately will provide a key to this code.

³ We request that the State take appropriate measures to safeguard personally identifying information contained in our consultant's report.

requirements of the SRC Plan. While there are still areas of the SRC Plan that require further efforts at the Centers, those areas are becoming fewer in number.

Glenwood Resource Center

Integrated Protections, Services, Treatments, Supports SRC Plan IV

With regard to development of integrated, individual support plans ("ISPs") and psychological, behavioral, and habilitation services, GRC has improved with respect to facilitating resident choice, enhancing independence, and supporting self-determination. There has been good improvement in interdisciplinary team functioning, and the system in place appears adequate to provide teams with meaningful recommendations and individual feedback. Accordingly, we have determined that GRC is in compliance with this requirement (SRC Plan - Section IV.A.2). The other elements of interdisciplinary team functioning remain in compliance (SRC Plan - Section IV.A. 1,3-5).

The ISP process has also improved. The person-center planning process has improved, as have the strategies and supports included in the ISPs. These processes are now meeting professional standards and the requirements of the SRC Plan (Section IV.B.1-4). The quality assurance process for ensuring the appropriateness of ISPs has also improved to the point where these procedures now comply with the SRC Plan as well (SRC Plan - Section IV.B.10). Consistency of ISPs and Individualized Education Plans, staff training, and team caseloads continued to be compliant with the SRC Plan (Section IV.B.6-9).

However, Monthly Integrated Reviews ("MIRs") frequently do not include data interpretation of habilitation efforts (SRC Plan - Section IV.B.5). In response to this issue, GRC has implemented a "Judgment of Progress" protocol. This protocol has demonstrated a positive effect regarding behavioral data, but must consistently be applied with regard to habilitation information for GRC to achieve compliance with this requirement.

Clinical Care - SRC Plan V

Regarding clinical care services, GRC has improved its supervision, management, and peer reviews structures and systems. The facility also has developed policies and procedures to ensure integration of clinical services. These are significant steps forward from our previous tours.

The SRC Plan requires that residents receive timely health care assessments. During our November tour, we reviewed the records of five GRC residents who were hospitalized. In general, these records showed appropriate physician and nursing assessments before and after transfer to an acute care setting. However, in one instance, an individual did not receive an assessment before transfer and in another the resident did not receive adequate assessments either before or after transfer. Thus, while there have been improvements in assessment and response to clinical care of residents, further tightening of these procedures is necessary. (SRC Plan - Section V.B.1a-f).⁴

The timely assessment and development of care plans for at-risk individuals have also improved. However, our record review indicated that residents experiencing conditions such as bowel obstructions, reflux, hiatal hernias,⁵ and esophagitis⁶ were not consistently identified as at risk for these health concerns. As noted below, GRC has made progress in the capabilities of its nurses, but we believe that additional training of GRC's nursing staff regarding the needs of at-risk residents is warranted to enable the facility to achieve substantial compliance in this area. (SRC Plan - Section V.C.1).

Nursing Care - SRC Plan X)

As with many other areas of the SRC, GRC continues to make strides in improving its nursing services. For example, nursing assessments, diagnoses, and care plans are now updated quarterly in accordance with the requirements of the SRC Plan, and GRC is now in compliance with these portions of the SRC Plan (Section X.1-2). Further, it is evident that the facility has devoted significant effort toward, and has made improvements in, other areas of nursing services, e.g., reporting of medical conditions and documentation of progress. However, as of the time of our visit, these aspects of nursing care were not yet fully in place. (SRC Plan - Section X.3-5).

⁴ You will note that on the Compliance Charts in areas such as this, we have, where appropriate, made the notation that, while compliance has yet to be achieved, there has been "progress noted" with certain requirements.

⁵ A hiatal hernia is the protrusion of the stomach into the esophagus.

⁶ Esophagitis is inflammation of the esophagus lining.

Physical and Nutritional Management - (SRC Plan XI)

GRC continues to make strides in developing and improving its physical and nutritional management ("PNM") programs. A PNM "Core Team" provides an interdisciplinary approach to addressing residents' PNM issues. Risk indicators have been developed and residents have individual PNM Plans. These plans ("PNMPs") include person-specific instructions regarding intake, positioning, transfer, medication administration, and activities of daily living.

However, while positioning is included in residents' PNMPs, we often witnessed residents improperly seated or in poor alignment (SRC Plan - Section XI.A.2-5). For example, we saw residents with inadequate support for their feet or legs, loose pelvic positioning devices, and residents sitting with their hips out of proper alignment. During our November tour, we spent a good deal of time reviewing a resident who had a PNMP that detailed the position he was to be in at mealtime and the texture of his food. When we observed him, he was both poorly positioned, and he was being served food that was not called for by his PNMP. When the error was pointed out, the staff had to be corrected twice before the resident received the proper texture of his food.

The facility is tracking data regarding key health indicators for persons requiring PNMPs. These data appear to be generally accurate, and they show declines in the rates of problematic health indicators, such as occurrences of aspiration pneumonia. This is a positive development.⁷ Separately, GRC's monitoring of individual PNMPs, which addresses a review of the PNMP's efficacy, including whether it is implemented correctly, also has improved (SRC Plan - Section XI.A.6). However, our own observations of improper meal procedures indicate that this monitoring system, while improved, is not sufficiently reliable. Further, with regard to GRC's monitoring of individual's PNM-related progress, PNM progress notes did not consistently provide complete information in order to permit adequate tracking of actions and outcomes (SRC Plan - Section XI.A.7).

Thus, although GRC has aggressively developed needed components of a PNM system to address long-standing PNM

⁷ However, we caution that a facility should be using assessment tools that do not depend upon the presence of bad health outcomes to determine the efficacy of interventions. GRC is correctly attempting to use such tools.

deficiencies, the successful implementation of all the components has not yet occurred. We recognize that some of these components could not fully mature until others were put in place, and we are hopeful that GRC is now positioned to achieve substantial compliance in all areas of PNM supports and services.

Separately, our November 2008 tour of GRC also addressed physical and occupational therapy services ("PT/OT") as part of the overall PNM program. While our November tour found certain areas that could be improved (e.g., assessments could better address the concept of improved function or skill acquisition as the expected outcome of therapy) PT/OT services remain generally in compliance with the requirements of the SRC Plan (Section XI.B).

Communication Service - SRC Plan XII

Despite GRC making additional efforts, such as adding speech and language staff and reorganizing the speech and language department, providing adequate communication services to residents of GRC remains problematic. While these are promising developments, a significant improvement from these measures was not yet apparent at the time of our October 2008 assessment of this area. As of that visit, the facility was not yet developing and implementing adequate programs to improve residents' communication skills (SRC Plan - Section XII.1).

However, GRC also has implemented a monthly Communication Clinic. Thus, GRC is now in substantial compliance with the requirement to identify individuals in need of augmentative/alternative communication devices (SRC Plan - Section XII.2).

Review of Deaths at Glenwood

As you are aware, a primary objective of our November 2008 tour of GRC was to review the circumstances surrounding nine deaths that had occurred at GRC prior to our November 2008 visit.⁸ As indicated above, the purpose of this review was to determine whether the deaths raised systemic issues bearing on GRC's compliance with the SRC Plan and generally accepted professional standards of care. We reviewed each decedent's medical records; we studied GRC's own internal documents

⁸ A tenth death also occurred during this period but was not covered in our review because the circumstances of this death did not suggest the existence of possible systemic issues.

reviewing the circumstances and care related to each death; and we interviewed GRC medical and nursing staff about the deaths. Our consultant's review focused on the care provided at the time of the terminal event. However, in the course of that review, our consultant also noted issues relating to preventative care. Our consultant's recommendations regarding preventative care are set forth at the conclusion of her report.

In one instance, we identified a quality of care concern directly associated with the terminal event, a delay in notifying a physician of the resident's deteriorating respiration. The resident ultimately was hospitalized because of this condition and died. Had the facility responded in a more timely manner, the worsening condition that ultimately led to this person's death might have been abated or stopped. As to the other eight deaths, the information we reviewed did not indicate the existence of systemic issues regarding the care around the terminal event that contributed to the terminal event. However, our review underscored our concerns regarding preventative care. Further, the review also surfaced care issues surrounding the terminal event that warrant correction, notwithstanding that these issues did not appear to contribute to the terminal event itself.

Notable among these issues are delays in communicating and responding to changes in health status, inaccurate medical records, and missing health documentation. GRC's internal quality assurance processes largely detected the same breakdowns in these areas that we uncovered, which is fundamental to the facility's ability to correct such breakdowns and avoid reoccurrence going forward. However, because these breakdowns are occurring at the point of care delivery, we urge GRC's professional staff to aggressively mentor residential treatment workers and unit nurses on the implementation of the improvements that GRC is undertaking. This is necessary to ensure that the improved processes are actually and reliably implemented. In a similar vein, although the quality of GRC's monitoring has improved, our review indicates that this monitoring is not yet sufficiently reliable. Here, too, we urge the facility's professional staff to continue to mentor its monitors, to enable the monitors to better detect and correct problems and to gather reliable, useful data. Separately, with regard to specific health areas of concern, our death review confirms the need for continuing attention to the long-term risks of aspiration pneumonia, chronic reflux, and bowel obstruction. We were gratified that the medical director independently identified these areas as priorities.

We recognize that GRC has undertaken significant improvements in nursing and medical care, especially in the latter half of 2008, and that facility staff have worked hard to achieve those improvements. Increasingly, the facility's focus must be on ensuring that these improved practices are consistently and reliably implemented.

Woodward Resource Center

Our November tour of WRC focused on Physical and Nutritional Management services, which was the main subject area not having achieved substantial compliance with the SRC Plan. We congratulate the State and staff of WRC for achieving compliance with the great majority of the SRC Plan's requirements at WRC.

Physical and Nutritional Management - (SRC Plan XI)

Our review showed WRC now to be in compliance with the majority of the elements of the SRC Plan for PNM services. However, we found a few instances where staff did not implement meal plans appropriately and some instances where staff did not appropriately position or transfer individuals. (SRC Plan - Section XI.A.3). Separately, according to WRC's own policy, it was possible that lengthy gaps of time could occur between the time an individual experienced an event, or a "trigger," that could put the individual at risk and the time by which the appropriate staff were required to respond. (SRC Plan - Section XI.A.7). We also noted that clinicians' documentation did not adequately address all information necessary to ensure that responses, and interventions, to a PNM event were adequate. These documentation gaps also hinder the ability of WRC's PNM Core Team to adequately review PNM-related incidents.

With regard to Occupational Therapy ("OT") and Physical Therapy ("PT") services, we found WRC to be in substantial compliance with the relevant provisions of the SRC Plan (Section XI.B). PT/OT assessments were thorough and for the most part addressed individuals' functional needs, and well as medical and health-related concerns.

Statewide Issues Regarding Serving Persons Having Moved from the SRCs to a More Integrated Setting Appropriate to Their Needs - SCR Plan XIV.B

In our letter of September 30, 2008, we noted our concerns that the State's quality assurance program for community providers remained fragmented. We also expressed concern regarding the effectiveness of the State's incident management

system in identifying problems and avoiding reoccurring problems. Finally, we noted that the facilities' ability to assist people in moving to more integrated settings was limited by a lack of community capacity. We would like the opportunity to discuss, in the near future, the State's response to these concerns.

Medication Variance Systems

Finally, the State has asked, as a matter of technical assistance, for guidance regarding medication error and medication variance systems. As you are aware, the SRC Plan requires the facilities "to track and address errors in the administration of medication." (Section VIII.4) In implementing this requirement, both facilities have gone beyond a reactive "medication error" system toward a more contemporary, preventative "medication variance" system. We believe this to be a commendable action. Indeed, a medication variance system encourages the reporting of both actual and potential discrepancies from expected practice in areas broader than simply the administration of medicine, such as preparation, recording, and transmittal of medication prescriptions; pharmacy packaging and dispensing of medications; procurement, storage and transportation of medications; documentation regarding the administration of medications; and accounting for and control of medications. Accordingly, it provides the most comprehensive quality assurance information to the facility regarding the control and administration of medications. To be effective in encouraging medication variance reporting, especially regarding potential variances, this system should be non-punitive, although significant departures from practice and errors that expose individuals to a tangible risk of harm would remain subject to possible discipline. We hope that this information is responsive to the State's request.

* * * *

If you have any questions or concerns, please do not hesitate to contact either me, at (202) 514-0195, or the attorneys assigned to this matter, Benjamin O. Tayloe, Jr. at (202) 514-8103, or Verlin Deerinwater at (202) 514-6260.

Sincerely,



Shanetta Y. Cutlar
Chief

Special Litigation Section

- 10 -

Enclosures